

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

V'GUARA, INC.,

Plaintiff(s),

vs.

STEVE DEC, et al.,

Defendant(s).

Case No. 2:13-cv-0076-JAD-NJK

ORDER GRANTING MOTION FOR
LEAVE TO AMEND

(Docket No. 68)

Pending before the Court is Defendant Steve Dec's motion for leave to file amended counterclaims to add a counter-defendant, filed on January 21, 2014. Docket No. 68. No opposition has been filed. The Court finds the motion properly decided without oral argument. *See* Local Rule 78-2. For the reasons discussed below, the Court the motion is hereby **GRANTED**.

Under Fed. R. Civ. P. 15(a), "[t]he court should freely give leave when justice so requires," and there is a strong public policy in favor of permitting amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). As such, the Ninth Circuit has made clear that Rule 15(a) is to be applied with "extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). In deciding a motion for leave to amend, the court considers five factors: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether the plaintiff has previously amended the complaint. *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011). "Absent prejudice, or a strong showing of any of the remaining . . . factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to amend." *Eminence Capital*, 316 F.3d at 1052 (emphasis in original).

1 Defendant's motion seeks leave to amend his counterclaims to add Mirek Wierzbowski as a
2 counter-defendant. *See* Docket No. 68 at 2. Mr. Wierzbowski is an officer and director of Plaintiff. *See*
3 *id.* As such, Defendant argues that Mr. Wierzbowski has had notice of this case and will not be prejudiced
4 by being added as a counter-defendant. *See id.* at 3. Indeed, the record bears out that Mr. Wierzbowski has
5 been actively involved in litigating this case. *See* Docket No. 8, Exh. 1 (declaration of Mirek Wierzbowski
6 in support of motion for temporary restraining order). In evaluating the factors above and in recognition
7 of the "extreme liberality" with which Rule 15(a) is to be applied, the Court finds that the counterclaims
8 can be amended to add Mr. Wierzbowski as a counter-defendant.¹

9 Accordingly, the motion for leave to amend the counterclaims is hereby **GRANTED**. Defendant
10 shall file the amended counterclaims within 10 days of this order.

11 IT IS SO ORDERED.

12 Dated: February 10, 2014

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16 NANCY J. KOPPE
17 UNITED STATES MAGISTRATE JUDGE
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27 ¹ Although futility is a relevant factor for consideration, nothing herein shall be construed as
28 precluding Mr. Wierzbowski from filing a motion to dismiss. *Cf. Branch Banking & Trust Co. v. Pebble Creek Plaza, LLC*, 2013 U.S. Dist. Lexis 72732, *3 (D. Nev. May 22, 2013) (collecting cases regarding deferring challenges to the merits of a proposed amendment until after leave to amend is granted).